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Attorneys for Defendant David A. Weibel

UNITED STATES DISTRICT COURT  
DISTRICT OF OREGON  
PORTLAND DIVISION

JOHNNIE M. SUMMERS and CAROL  
A. SUMMERS, as husband and wife,

Plaintiffs,

vs.

DAVID A. WEIBEL, as Trustee;  
UNITED RESERVE LLC; and LUW  
SOOKPAUL,

Defendants.

No. 3:11-CV-835-MO

DEFENDANT DAVID A. WEIBEL'S  
MOTION TO DISMISS PURSUANT  
TO RULE 12(b)(6)

NO ORAL ARGUMENT UNLESS  
REQUESTED BY THE COURT

Pursuant to Fed. R. Civ. P. 12(b)(6), defendant David A. Weibel moves to dismiss with prejudice all causes of action alleged against him by plaintiffs Johnnie and Carol Summers ("Summers"), for the following reasons:

1. Plaintiffs' claim for "defective trustee sale" should be dismissed where they have not met the statutory criteria in ORS 86.742.

2. Plaintiffs' claim for "breach of contract" should be dismissed as to Mr. Weibel because, under Oregon law, a successor trustee is not a party to the contract.

3. Plaintiffs' "intentional misrepresentation" claim should be dismissed based on failure to meet the pleading standard set forth in *Twombly* and *Iqbal*.

4. The apparent claim of "intentional infliction of emotional distress" should be dismissed where Plaintiffs have not stated a claim under the applicable law.

5. Plaintiffs' action to "Quiet Title" can be resolved by documents attached to the Complaint, which reflect an unbroken series of assignments from Wells Fargo to United Reserve, LLC, and where Plaintiffs do not allege that they paid their obligation on the Deed of Trust ("DOT").

6. Plaintiffs' claim for an "Injunction" should be dismissed as moot, unnecessary, and where granting a permanent injunction could conflict with the outcome of the quiet title action.

Pursuant to Local Rule 7.1(a), counsel for plaintiffs and Mr. Weibel have made a good faith effort to resolve the issues raised by this motion, but have been unable to reach an agreement.

Respectfully submitted this August 3, 2011.

LEE SMART, P.S., INC.

By: s/ Marc Rosenberg  
Marc Rosenberg  
Attorneys for Defendant  
David A. Weibel

### DECLARATION OF SERVICE

I hereby certify that on the date provided below, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following individuals:

John P. Bowles  
Bowles Fernandez LLC  
5200 SW Meadows Road, Suite 150  
Lake Oswego, OR 97035  
Main (503) 726-5930

I declare under penalty of perjury under the laws of the State of Oregon that the foregoing is true and correct to the best of my knowledge.

DATED August 3, 2011, at Seattle, Washington.

LEE SMART, P.S., INC.

By: s/ Marc Rosenberg  
Marc Rosenberg  
Attorneys for Defendant  
David A. Weibel